

ATTACHMENT 3

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October 22, 2018

FREEDOM OF INFORMATION ACT APPEAL

VIA E-MAIL TO: FOIA.appeals@sol.doi.gov

DOI FOIA/Privacy Act Appeals Office
ATTN: FOIA/PRIVACY ACT APPEALS OFFICE
Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240

Re: Buffalo Field Campaign Freedom of Information Act request (June 20, 2018)
FOIA control number NPS-2018-00887

Dear FOIA Appeals Officer:

This document constitutes Buffalo Field Campaign's appeal of records and information withheld by Yellowstone National Park Superintendent's office in response to our Freedom of Information Act (FOIA) request NPS-2018-00887.

Specifically, Buffalo Field Campaign appeals the National Park Service's unlawful use of Exemption (b)(5), the FOIA's deliberative privilege exemption, to redact 17 documents totaling 149 pages.

A copy of all correspondence and responses generated in our FOIA request are included in our appeal.

Attorney Daniel Snyder, Law Offices of Charles M. Tebbutt, P.C., Eugene, Oregon is handling Buffalo Field Campaign's appeal. Mr. Snyder may be reached at: dan@tebbuttlaw.com, or by phone at 541-344-3505.

BACKGROUND

On June 20, 2018 Buffalo Field Campaign requested all records from the Office of the Superintendent, Yellowstone National Park concerning the following subject matter:

1. The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem.
 - a. Exclude the bison census or population size estimates produced by Yellowstone National Park.
 - b. Exclude Yellowstone National Park records available on ibmp.info.

The time period for the requested records is March 1, 2017 to June 20, 2018.

“Office of the Superintendent” refers to the Superintendent, Office of the Superintendent staff and personnel acting under the authority or on behalf of the Superintendent.

“All records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

On July 18, 2018, the National Park Service provided a non-determination letter to Buffalo Field Campaign’s habitat coordinator who acknowledged receipt of the notice of delay. On the same day, the National Park Service provided a partial response releasing 9 documents totaling 33 pages.

On August 15, 2018, Buffalo Field Campaign’s habitat coordinator emailed the Superintendent’s office requesting the National Park Service comply with the FOIA and make a final determination on the remainder of the request. On August 16, 2018, the National Park Service responded that the agency intended to send the remaining portion of its response in the near future.

On August 22, 2018, the National Park Service released 20 documents totaling 108 pages in their entirety, applied a (b)(5) draft deliberative privilege claim to 17 documents totaling 149 pages, and applied a (b)(7) law enforcement privilege claim to 2 documents totaling 7 pages.

I. THE FREEDOM OF INFORMATION ACT IS DESIGNED TO REQUIRE DISCLOSURE OF AGENCY RECORDS.

The purpose of the FOIA “is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *National Labor Relations Board v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (citation omitted). The U.S. Congress designed the FOIA to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). Accordingly, the FOIA requires that federal government agencies disclose to the public any requested documents. 5 U.S.C. § 552(a). As the Supreme Court has declared: “FOIA is often explained as a means for citizens to know what ‘their Government is up to.’” *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). The Court elaborated that “[t]his phrase should not be dismissed as a convenient formalism.” *Id.* at 171-72. Rather, “[i]t defines a structural necessity in a real democracy.” *Id.* at 172. “As a general rule, if the information is subject to disclosure, it belongs to all.” *Id.*

The National Park Service may avoid disclosure only if it proves that the requested documents fall within one of the nine enumerated exemptions to the general disclosure requirement. 5 U.S.C. § 552(b)(1)–(9). Thus, the FOIA establishes a statutory right of access by any person to federal agency records. Consistent with encouraging disclosure, the exemptions under § 552(b) are discretionary, not mandatory. *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). “Subsection (b), 5 U.S.C. § 552(b), which lists the exemptions, simply states that the specified material is not subject to the disclosure obligations set out in subsection (a). By its terms, subsection (b) demarcates the agency’s obligation to disclose; it does not foreclose disclosure.” *Id.* at 292.

The FOIA’s exemptions are to be construed “‘as narrowly as consistent with efficient Government operation.’” *Environmental Protection Agency v. Mink*, 410 U.S. 73, 89 (1973) (citing Senate and House Reports on exemption 5). This includes the deliberative process exemption: “It is also clear that the agency has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980) (citation omitted). “[W]hen material could not reasonably be said to reveal an agency’s or official’s mode of formulating or exercising policy-implicating judgment, the deliberative process privilege is inapplicable.” *Petroleum Inf. Corp. v. U.S. Dep’t of the Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992) (citation omitted). “To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communications within the agency.” *Coastal States Gas Corp.*, 617 F.2d at 866.

The FOIA is to be broadly construed in favor of disclosure.

FOIA generally provides that the public has a right of access, enforceable in court, to federal agency records. *See Anderson v. Dep’t of Health & Human Services*, 907 F.2d 936, 941 (10th Cir. 1990). FOIA is to be

broadly construed in favor of disclosure, and its exemptions are to be narrowly construed. *Id.* The federal agency resisting disclosure bears the burden of justifying nondisclosure. *Id.*

Audubon Society v. U.S. Forest Service, 104 F.3d 1201, 1203 (10th Cir. 1997).

Given the public disclosure policy favored in the FOIA, federal courts have consistently refused to allow agencies to meet their burden of proving the requested documents fall within one of the FOIA's exemptions by making conclusory and generalized allegations of confidentiality. "We repeat, once again, that conclusory assertions of privilege will not suffice to carry the Government's burden of proof in defending FOIA cases." *Coastal States*, 617 F.2d at 861. *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) ("agencies must be required to provide the reasons behind their conclusions in order that they may be challenged by FOIA plaintiffs and reviewed by the courts."). "We remind the agencies, once again, that the burden is on them to establish their right to withhold information from the public and they must supply the courts with sufficient information to allow us to make a reasoned determination that they were correct." *Coastal States*, 617 F.2d at 861. *Anderson v. Dep't of Health & Human Services*, 907 F.2d 936, 941 (10th Cir. 1990) ("The district court must determine whether all of the requested materials fall within an exemption to the FOIA and may not simply conclude that an entire file or body of information is protected without consideration of the component parts.") (citation omitted).

II. THE NATIONAL PARK SERVICE DID NOT PROVIDE THE NECESSARY PROOF AND DETAILED SPECIFICITY FOR WITHHOLDING RECORDS AND INFORMATION FROM THE PUBLIC UNDER THE "DELIBERATIVE PROCESS" CLAIM.

The National Park Service's response letter (Aug. 22, 2018) does not provide the necessary detail, particular justification, and proof for withholding records and information from the public under the "deliberative process" exemption.

Courts employ a two-part test to examine an agency's withholding deliberative information under Exemption 5: (1) the document must be either inter-agency or intra-agency; and (2) the document must be both predecisional and part of the agency's deliberative or decisionmaking process. *Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001). Factors to consider in determining whether a document falls within the deliberative process privilege include whether the document (1) "is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency"; (2) "is recommendatory in nature or is a draft of what will become a final document"; and (3) "weigh[s] the pros and cons of agency adoption of one viewpoint or another"; however, even if the document was predecisional at the time it was prepared, it is not exempt from disclosure if it has been "adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The exemption applies only to federal government agencies:

[T]he communication must be “inter-agency or intra-agency.” 5 U.S.C. § 552(b)(5). Statutory definitions underscore the apparent plainness of this text. With exceptions not relevant here, “agency” means “each authority of the Government of the United States,” § 551(1), and “includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government ..., or any independent regulatory agency,” § 552(f).

Dep’t of the Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 9 (2001). “If a document is neither inter- nor intra-agency, then an agency may not withhold it, regardless of whether or not it reflects the deliberative process of the agency, attorney work product, or is an attorney-client communication. *See Klamath*, 532 U.S. at 12, 121 S.Ct. 1060.” *Center for Biological Diversity v. Office of the U.S. Trade Rep.*, 450 Fed. Appx. 605, 608 (9th Cir. 2011).

If the record is found to be inter- or intra-agency, it must also satisfy the “deliberative process” prong of the exemption. The Ninth Circuit explained the “deliberative process” privilege in *National Wildlife Federation v. U.S. Forest Service*, stating that to qualify for Exemption 5, the document must be “both (1) ‘predecisional’ or ‘antecedent to the adoption of agency policy’ and (2) ‘deliberative,’ meaning ‘it must actually be related to the process by which policies are formulated.’” 861 F.2d 1114, 1117 (9th Cir. 1988) (citation omitted). The policy for protecting such records “is to enhance ‘the quality of agency decisions’ . . . by protecting open and frank discussion.” *Klamath*, 532 U.S. at 9 (citation omitted).

Two prerequisites are required to properly apply the deliberative process privilege:

In deciding whether a document should be protected by the privilege we look to whether the document is “predecisional”—whether it was generated *before* the adoption of an agency policy—and whether the document is “deliberative”—whether it reflects the give-and-take of the consultative process.

Senate of the Commonwealth of Puerto Rico v. U.S. Dep’t of Justice, 823 F.2d 574, 585 (D.C. Cir. 1987)(citations omitted). “Accordingly, to approve exemption of a document as predecisional, a court must be able ‘to pinpoint an agency decision or policy to which the document contributed.’ *Paisley*, 712 F.2d at 698.”

Documents that contain technical discussions by agency staff are not considered “deliberative” of policy determinations. Such records are “primarily reportorial and expository, not deliberative.” *In re Franklin Nat. Bank Securities Litigation*, 478 F. Supp. 577, 585 (E.D. N.Y. 1979). *See also Seafirst Corp. v. Jenkins*, 644 F. Supp. 1160, 1163

(W.D. Wash. 1986) (“expert interpretations of facts” are not deliberative); *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980) (documents which are “simply straightforward explanations of agency regulations in specific factual situations” are not deliberative, but are “more akin to a ‘resource’ opinion about the applicability of *existing policy* to a certain state of facts.”) (emphasis added).

“[F]actual material that does not reveal the deliberative process is not protected by this exemption.” *National Wildlife*, 861 F.2d at 1117 (quoting *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983)). “[D]ocuments containing nonbinding recommendations on law or policy would continue to remain exempt from disclosure,” as would factual materials “to the extent that they reveal the mental processes of decisionmakers.” *Id.* at 1119 (citation omitted). However, “‘memoranda consisting *only* of compiled factual material or *purely* factual material contained in deliberative memoranda and severable from its context would generally be available’ for inspection by the public.” *Id.* at 1118 (citations omitted).

“Under the deliberative process privilege, factual information generally must be disclosed.” *Petroleum Inf. Corp. v. U.S. Dep’t of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992). “[T]he privilege applies only to the ‘opinion’ or ‘recommendatory’ portion of the report, not to factual information which is contained in the document.” *Coastal States*, 617 F.2d at 867. “The exemption does not protect ‘purely factual material appearing in ... documents in a form that is severable without compromising the private remainder of the documents.’” *Playboy Enterprises, Inc. v. Dep’t of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982) (citing *EPA v. Mink*, 410 U.S. at 91).

Thus, any report, or portion thereof, that does not qualify for the privilege must be disclosed.

Here, Buffalo Field Campaign takes exception with the National Park Service’s use of the deliberative process exemption. In particular, as to the “Briefing Statements”:

- The National Park Service did not “narrowly” interpret or construe its privilege to withhold records and information from the public. Instead, from the redacted records, it appears the Park Services used a broad brush in deciding what to redact.
- The National Park Service did not point to any specific or particular agency decision or policy that is “predecisional” for each record and information withheld. From our review of the materials, there does not appear to be any particular discussions between subordinate and supervisor discussing the formation of agency policy or law.
- The National Park Service did not identify the role each withheld and redacted Briefing Statement had in any deliberative process underway or in the formulation of policy it has not already adopted. Bison management policies as

presented and summarized in the Briefing Statements withheld by the agency have been in place since 2000.

- Briefing Statements do not meet the criteria of being predecisional (‘antecedent to the adoption of agency policy’) *and* deliberative (“meaning it must actually be related to the process by which policies are formulated”). *National Wildlife* 861 F.2d at 1117. Instead, they are reportorial, in that they are merely a presentation of facts regarding an existing agency decision or policy.
- Briefing Statements are akin to memoranda, factual material or reports compiled by the National Park Service to explain the basis for its policy to the public.
- The National Park Service has not demonstrated that any of the Briefing Statements withheld fall within “the frank exchange of ideas on legal or policy matters” that permit the (b)(5) exemption.
- The National Park Service has also not demonstrated that any of the Briefing Statements withheld are part of the “give-and-take of the consultative process” or that any of the Briefing Statements contain “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Coastal States*, 617 F.2d at 866.
- The National Park Service withheld Briefing Statements in their entirety that the agency released on the ibmp.info web site covering the same bison management topics. For example:

Adaptive Management Criteria in the federal and state IBMP Records of Decision (Aug. 28, 2008) available at <http://ibmp.info/Library/20080828/Briefing%20-%20YNP%20ROD.pdf>.

Bison Monitoring and Surveillance Plan (Aug. 28, 2008) available at <http://ibmp.info/Library/20080828/Briefing%20-%20YNP%20Bison%20Surveillance1.pdf>.

Bison Population Status (Aug. 7, 2008) available at http://ibmp.info/Library/20080806/Briefing%20-%20YNP2_Bison%20Populations.pdf.

Genetics Assessment of Effective Population Size (Dec. 8, 2010) available at http://ibmp.info/Library/20101207/Genetics%20report_8%20Dec%202010.pdf.

Interagency Bison Management Plan update - 2007/2008 (Aug. 6, 2008) available at <http://ibmp.info/Library/20080806/Briefing%20-%20YNP1.pdf>.

Transfer of Surplus Bison under the IBMP (Aug. 11, 2009) available at http://ibmp.info/Library/20090811/IBMP_TransferSurplusBison_Brief.pdf

- Indeed, the Briefing Statements the National Park Service withheld appear to be updated with new information on bison management policies long in place i.e., surplus/quarantine, monitoring, population size, adaptive management strategy, among them. It is difficult to understand how these can be both “predecisional” and “deliberative” when they discuss decisions and deliberations that have already been concluded.

Accordingly, Buffalo Field Campaign requests that the Briefing Statements be released in their entirety.

Additionally, Buffalo Field Campaign takes issue with the Park Service’s withholding of a manuscript submitted for the journal *Policy Sciences* (pages 95–112 and 125–138). The redactions should be removed, because the manuscript is not the formulation of agency policy or law, is not deliberative, and is not predecisional. In particular:

- A manuscript prepared for publication is science – an expert’s interpretation of facts.
- A manuscript prepared for publication in a journal is not deliberative. While the National Park Service may withhold opinions solicited in support of drafting its publication, it cannot withhold the manuscript submitted for publication under exemption (b)(5).

The National Park Service also withheld a record and information submitted by the Bureau of Land Management to the Superintendent (pages 222–223). The BLM official is not a subordinate to the Superintendent of Yellowstone National Park. The agency did not demonstrate how a document shared with the Superintendent bound the National Park Service to any policy or decision. As such, those pages should be released in full.

The National Park Service also withheld an Environmental Assessment on the Conservation and Management of Yellowstone bison (pages 153–211). The National Park Service did not “narrowly” identify or construe its exemption privilege to segregate factual material and expert science presented in the environmental assessment. The National Park Service is well aware of the intense public interest in bison management policy. The public wants to know “what their government is up to.” *U.S. Dept of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 773 (1989). “Official information that sheds light on an agency’s performance of its statutory duties falls squarely within that statutory purpose.” *Id.* As such, the Environmental Assessment

should be released. At minimum, factual material and science contained in the Environmental Assessment should be released.

The National Park Service entirely withheld factual material and science in several Briefing Statements, none of which are identified as drafts:

- Bison Management: Long term Strategy (pages 84–85)
- Quarantine Program for Yellowstone Bison (page 87)
- Bison Grazing Effects on Northern Grasslands (page 88)
- Bison Issues (Population, Quarantine, Removal/Winter Operations) (pages 91–93)
- Long-Term Bison Management Strategy, including Quarantine (pages 121–123)

On one hand, the National Park Service entirely withheld a Briefing Statement on Bison Abundance under the Interagency Bison Management Plan (pages 236–237). And on the other hand, the Park Service released a document with the same date and title as the document it withheld (pages 234–235). This is highly confusing when attempting to ascertain how the redacted document actually constitutes a deliberative process, given the content provided in the fully released document.

The National Park Service also withheld Talking Points in a Briefing Statement on a Quarantine Program for Yellowstone bison (page 115). Talking points explain or elucidate a policy. Quarantining bison is an adopted policy of the National Park Service extending in practice to 2006, and originally proposed in 2000. The Talking Points should be released.

The National Park Service has a track record of publishing and updating Briefing Statements to share with the public facts and information about its bison management policies. For example, the web site ibmp.info contains National Park Service Briefing Statements and periodic updates to those Briefing Statements as new facts become available to the agency.

The National Park Service's Briefing Statements are an important way for the public, including Buffalo Field Campaign, to obtain factual information and updates on how the agency is carrying out its bison management policies that have been in place for two decades.

The National Park Service has not met its burden to withhold records and information from Buffalo Field Campaign. It did not “narrowly” identify and construe its privilege to exempt records from disclosure to the public. Instead, the agency broadly construed and applied a standard that arbitrarily kept from the public information it needs to know what “their Government is up to.”

The National Park Service's Conclusory Statements Do Not Justify Nondisclosure

As noted above, the federal courts have repeatedly held that “conclusory assertions of privilege will not suffice to carry the Government’s burden of proof in defending FOIA cases.” *Coastal States*, 617 F.2d at 861. *See also Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) (“agencies must be required to provide the reasons behind their conclusions in order that they may be challenged by FOIA plaintiffs and reviewed by the courts.”). Unsupported or conclusory justifications for nondisclosure “are unacceptable and cannot support an agency’s decision to withhold requested documents.” *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983) (citation omitted).

FOIA imposes on agencies the burden of establishing that information is exempt from release. 5 U.S.C. § 552(a)(4)(B). In order to meet their burden, courts have uniformly required agencies to compile a so-called “Vaughn Index” that identifies each document withheld and the statutory exemption claimed for each document, and sets forth “a particularized explanation of how disclosure of the particular document would damage the interest protected by the claimed exemption.” *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir. 1991) (citation omitted). *See also Animal Legal Defense Fund v. Dep’t of the Air Force*, 44 F. Supp. 2d 295, 299 (D.D.C. 1999) (the government “must establish ‘what deliberative process is involved, and the role played by the documents in issue in the course of that process.’” (citation omitted); *King v. Dep’t of Justice*, 830 F.2d 210, 224 (D.C. Cir. 1987) (“specificity imposes on the agency the burden of demonstrating applicability of the exemptions invoked *as to each document or segment withheld* . . . and sets forth the exemption claimed and why that exemption is relevant.”) (emphasis in the original).

The National Park Service’s blanket claim for withholding records and information does not adequately state the particulars. While the agency identifies and explains the (b)(5) privilege, it does not “set[] forth a particularized explanation of how disclosure of the particular document would damage the interest protected by the claimed exemption.” *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir. 1991). Merely reciting the statutory language of exemption 5 evades the “particular” explanation or a statement of reasons for withholding a “particular” record or information sought under the FOIA.

III. EVEN IF PORTIONS OF THE WITHHELD DOCUMENTS ARE EXEMPTED FROM DISCLOSURE, THE NATIONAL PARK SERVICE FAILED TO PROVIDE “REASONABLY SEGREGABLE PORTIONS” OF THE RECORDS AND INFORMATION TO THE PUBLIC.

Even if the National Park Service could prove that the records and information it withheld are exempt from release under the FOIA, only those specific portions of the records(s) that are legally exempt can be withheld. In this case, the National Park Service improperly withheld entire documents, instead of releasing “reasonably segregable portions” not fully protected from disclosure by exemption 5. 5 U.S.C. § 552(b).

“[T]he exemptions to the FOIA do not apply wholesale. An item of exempt information does not insulate from disclosure the entire file in which it is contained, or even the entire page on which it appears.” *Arieff v. U.S. Dep’t of the Navy*, 712 F.2d 1462, 1466 (D.C. Cir. 1983). “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” *Anderson v. Dep’t of Health & Human Services*, 907 F.2d 936, 942 (10th Cir. 1990) (citation omitted).

Here, the National Park Service failed to describe the “mix of privileged and non-privileged information and explain[] why it would not be possible to simply redact the privileged materials.” *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 267 (D.D.C. 2004) (citation omitted). Indeed, from our review, there are readily segregable portions of records that are purely factual. The Environmental Assessment is perhaps the most obvious example.

In addition, as shown above, “[f]actual material that does not reveal the deliberative process is not protected by this exemption.” *National Wildlife*, 861 F.2d at 1117 (quoting *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983)). “[M]emoranda consisting only of compiled factual material or purely factual material contained in deliberative memoranda and severable from its context would generally be available for discovery by private parties in litigation with the Government.” *EPA v. Mink*, 410 U.S. 73, 87–88 (1973) (footnote omitted).

The National Park Service withheld the title of an Issue, and the entire Briefing Statement on the undisclosed issue (pages 238–239). We believe it is a Briefing Statement on bison grazing. The National Park Service is studying bison grazing on the northern range with respect to managing the population size. See Geremia et al. *Bison Effects on Yellowstone Grasslands* (Update for 2015–16) available at: http://ibmp.info/Library/20161201/2_ChrisGermania_ProgressReport2016bestVersion.

The National Park Service must, at minimum, release factual information and science contained in the Briefing Statements on bison grazing (pages 88, 233, 238–239).

The National Park Service failed to release such portions, or adequately justify at all why it has not done so. Any records or information that can be reasonably segregable portions should be released.

RELIEF SOUGHT

Based on the above, Buffalo Field Campaign requests that the National Park Service immediately release the requested records, and reasonably segregable, non-exempt portions thereof, that were improperly withheld. We ask for your final determination within 20 working days pursuant to the FOIA. It would be useful as we evaluate the need to seek judicial review of this matter if you were to provide us with a projected date-certain by which we could expect a determination of our appeal as required by the FOIA.

We reserve the right to seek immediate judicial review if this appeal is not satisfactorily resolved and the requested documents produced in the FOIA-mandated time deadlines.

Dated this 22nd Day of October, 2018.

/s/ Darrell Geist
Habitat Coordinator
Buffalo Field Campaign

/s/ Daniel C. Snyder
OSB# 105127
Law Offices of Charles M. Tebbutt, P.C.